

14. CONCLUSION

14.1 Introduction

This final chapter summarizes the environmental requirements associated with (1) real property transfers without change of ownership and (2) real property transfers with a change of ownership. Exhibit 14-1 is a compilation of all the citations (statute, Presidential Executive Order, regulation, or DOE Order) for all environmental requirements for real property transfers (regardless of the type of transfer) for all environmental subject areas. The BLM regulations are not shown in Exhibit 14-1 because there is only one citation, namely, 43 CFR 2372.1. Exhibit 14-2 is a chart recommending how the environmentally sensitive resources discussed in Chapters 2-5 should be treated for each of the two general types of real property transfer: no change in ownership and change in ownership. Note that Exhibit 14-2 does not apply to the return of withdrawn land to the public domain. Exhibit 14-3 summarizes the environmental requirements discussed in Chapters 2-13 to be fulfilled for the two general types of real property transfer: no change in ownership and change in ownership. Transfers involving no change of ownership are focused on leases in Exhibit 14-3.

14.2 Real Property Transfers without Change of Ownership

Real property transfers without a change of ownership encompass the return of withdrawn land to the public domain and outgrants. Outgrants include easements, leases, licenses, and permits. Of all outgrants, for that matter of all real property transfers, the most frequent is expected to be the lease. Also, CERCLA imposes a special provision for leases (see Exhibit 14-4).

In particular, CERCLA § 120(h)(5) requires that DOE notify the appropriate state official of any leases that will encumber DOE real property beyond the date of termination of operations if any hazardous substance or petroleum product was stored, released, or disposed of on the real property.

In such cases, DOE must notify the state before entering into the lease.

In addition, Section 6.10 discussed CERCLA § 120(h)(1) (as implemented by 40 CFR Part 373) requiring a notification if hazardous substances exceeding specified thresholds were stored, disposed of, or released on the real property. This notification, which must include information on the types and quantities of such hazardous substances, should appear in the contract for the outgrant (e.g., lease) of the real property. Besides the types and quantities of hazardous substances, the dates on which the hazardous substances were stored, released, or disposed of on the real property must be included in the notification. Finally, 40 CFR Part 373 mandates that the hazardous substance notification in the contract be accompanied by the following statement: "The information contained in this notice is required under the authority of regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund") 42. U.S.C. Section 9620(h)."

14.3 Real Property Transfers with Change of Ownership

14.3.1 Real Property Disposal Process

Real property transfers with a change of ownership include donations, exchanges, sales, and other disposals. As mentioned in § 1.4.3, DOE may directly dispose of real property under certain statutes (see Exhibit 1-4) otherwise, GSA disposes of the excess real property (see Exhibits 1-4 and 14-5). The hierarchy of priority for transfers is as follows: another Federal agency, State or local government, and private party. GSA does a screening of real property reported as excess to determine if it meets the needs of other Federal agencies (see Exhibit 14-5). If the real property is needed by another Federal agency, the real property transfer takes place when the receiving agency pays fair market value for the real property [41 CFR

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101.67-203-7(f)(2)]. If it is waived from such screening by GSA and has not been designated for utilization by another Federal agency, then GSA declares the real property as surplus. GSA then notifies DOE of its determination.

State, regional, and local public agencies (and certain nonprofit institutions) then have the right of first refusal of the surplus real property (see Exhibit 14-5). In fact, the disposing agency must prepare a list of such public agencies and notify these agencies of the availability of the surplus real property for procurement. Such agencies must submit an application to procure the real property for a specified proposed use within a pre-determined reasonable time period. The use must be consistent with official development plans. After a time period during which no public agency has expressed an interest to procure the real property, the disposing agency may publicly advertise an invitation for buyers to make bids/offers for the surplus real property (see Exhibit 14-5).

14.3.2 Requirements for Invitation for Bids/Offers

In any Invitation for Bids/Offers, the disposing agency must provide a notice regarding asbestos (see Chapter 10), if present, and a notice regarding hazardous substances (see Chapters 6, 7, 8, and 9), if they were or are present

14.3.3 Requirements for the Contract and Deed

When the real property is processed for transfer from DOE to the new owner (see Exhibit 14-6), a contract (for the sale or transfer) and a deed must be prepared. Certain statements concerning hazardous substances must be incorporated in both the contract and the deed in accordance with CERCLA § 120(h) (see Chapter 6). Even on contracts and deeds that convey real property from one Federal agency to another Federal agency, the information statement and covenant concerning hazardous substances must be included (55 FR 14208).

The final step in the real property transfer process (Exhibit 14-6) is to notify the regulatory authorities

of the change in ownership. Notification procedures are discussed in § 7.12, § 8.13, § 9.13, and Chapter 11.

14.3.4 Deferral of the Covenant Statement

The Fiscal Year 1997 Defense Authorization Act enacted September 23, 1996 added CERCLA § 120(h)(3)(C) to allow a deferral of the following paragraph in a covenant statement required by CERCLA § 120(h)(3)(A)(ii)(I) to be placed on a deed:

(1) All remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the property has been taken before the date of the transfer.

The above paragraph in the required covenant statement may be deferred under the following conditions:

- The appropriate official makes the deferral after determining that the real property is suitable for transfer,
- Response action assurances are provided in the deed or other agreement proposed to govern the transfer,
- At the conclusion of response actions, DOE executes and delivers a warranty that response actions have been taken. The warranty is considered to satisfy the requirement for the covenant statement specified in Section 120(h)(3)(A)(ii)(I).

First, the appropriate official for making the deferral depends on whether the Federal facility to be transferred is on the National Priorities List. If on the list, the EPA Administrator, with the concurrence of the Governor of the state in which the real property is located, makes the deferral. If not on the list, the Governor of the state in which the real property is located makes the deferral.

The appropriate official determines whether the real property is suitable for transfer based on fulfillment of all the following conditions:

(1) The real property is suitable for the use intended by the transferee, and the intended use is consistent with the protection of human health and the environment. (For example, a site cleanup to a level at which ingestion of a handful of dirt would cause acute illness in a child would not be suitable for a playground.)

(2) The Federal agency (i.e., DOE) requesting the deferral has published, in a newspaper of general circulation in the vicinity of the real property, a notice of the following:

- Proposed transfer, and
- Opportunity for the public to submit, within a period of not less than 30 days, written comments on the suitability of the real property for transfer.

(3) The deferral and real property transfer will not substantially delay any necessary response action at the real property.

(4) The deed or other agreement governing the real property transfer contains the following clauses:

- Necessary restrictions on the use of the real property to ensure the protection of human health and the environment (e.g., the maintenance of an institutional barrier, such as a cap or fence).
- Restrictions on the use necessary to ensure that the required remedial investigations, response actions, and oversight activities will not be disrupted.
- Assurance that response action will be taken along with the schedules for investigation and completion of all

necessary response action as approved by the appropriate regulatory agency.

- Submission of a DOE budget request to the Office of Budget and Management that adequately addresses schedules for investigation and completion of all necessary response actions for the property, subject to Congressional authorizations and appropriations.

Second, response actions that are in progress or that have yet to take place are assured in the deed or other agreement governing the transfer.

Third, when all response actions (necessary to protect human health and the environment with respect to any substance remaining on the real property by the date of the real property transfer) have been taken, DOE shall execute and deliver to the transferee the above required covenant statement.

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Environmental Subject Area	Statute or Presidential Executive Order (E.O.)	Implementing Regulations	Applicable GSA Regulations
Floodplains/Wetlands	E.O.s 11988 and 11990	10 CFR Part 1022	41 CFR 101-47.202-2(b)(6)
Natural Resources	Endangered Species Act Migratory Bird Treaty Act North American Wetlands Conservation Act § 9 Wild & Scenic Rivers Act	50 CFR Parts 402 & 424	None
Cultural Resources	American Indian Religious Freedom Act National Historic Preservation Act E.O. 13007	DOE Order 1230.2 36 CFR Part 800	41 CFR 101-47.202-2(b)(5) & (8)
Socioeconomics	E.O. 12898 National Defense Authorization Act of 1993 § 3161	DOE Order 4330.5	None
Hazardous Substances, Hazardous Waste, and Petroleum Products	CERCLA § 120(h)(1), (3), (4), & (5) RCRA § 3001	40 CFR Part 302 40 CFR Part 373	41 CFR 101-47.202-2(b)(10), 41 CFR 101-47.202-7 & 304-14

**Exhibit 14-1. Table of Citations of Environmental Requirements for Real Property Transfers
(Continued)**

Environmental Subject Area	Statute or Presidential Executive Order (E.O.)	Implementing Regulations	Applicable GSA Regulations
Underground Storage Tanks	CERCLA § 120(h)(1), (3), (4) & (5) RCRA Subtitle I	40 CFR Part 373 40 CFR Part 280	None; if tank contents consist of a hazardous substance, see above.
Radioactive Substances & Contamination	Atomic Energy Act CERCLA § 120(h)(1), (3), (4) & (5) Uranium Mill Tailings Radiation Control Act	40 CFR Part 373 40 CFR 192 DOE Order 5400.5	41 CFR 101-47.202-2(b)(10), 41 CFR 101-47.202-7, & 304-14
Polychlorinated Biphenyls (PCBs)	CERCLA § 120(h)(1), (3), (4) & (5) TSCA	40 CFR Part 373 40 CFR Part 761	41 CFR 101-47.202-2(b)(10) & (c)(3), 41 CFR 101-47.202-7, & 304-14
Asbestos	CERCLA § 120(h)(1), (3), (4) & (5) ASHERA ASHARA § 15 TSCA § 202 (10), § 206, § 207	40 CFR Part 373 40 CFR Part 763 (Asbestos Model Accreditation Plan)	41 CFR 101-47.202-2(b)(9), 41 CFR 101-47.202-7, & 304-13
Clean Air Act, Clean Water Act, RCRA, & SDWA Permits	Clean Air Act, Title V Clean Water Act § 301, 302, 404, & 405 RCRA § 3005 Safe Drinking Water Act Part C	40 CFR Part 70 40 CFR Parts 122, 233, & 505 40 CFR Parts 264, 265, & 270 40 CFR Part 144	None
NEPA Review	National Environmental Policy Act	10 CFR Part 1021 DOE Order 451.1	None

Exhibit 14-2. Recommendations for Treating Environmentally Sensitive Resources in Real Property Transfers

Environmental Resource	Type of Real Property Transfer	
	No Change in Ownership ¹	Change in Ownership
Floodplains/Wetlands	Exclude parcels with such resources from leases & other outgrants. If there is compelling reason to include such parcels in real property transfers, impose restrictions on disturbances, improvements, and other land uses. Protect the access of Native Americans to and physical integrity of sacred sites. Protect confidentiality of archeological and sacred sites.	Exclude parcels with such resources from all transfers unless: (1) new owner is another Federal agency, (2) new owner is an Indian Tribe (receiving Indian-related sites only), (3) use by new owner is compatible, or (4) new owner has a compelling need. Examples of compatible uses: wetland converted to park, habitat preserved as a wildlife refuge, and donation of an archeological site to a museum. Compelling needs must be decided on a case-by-case basis. In addition, restrictions on disturbances, improvements, & other land uses may be required on the deeds.
Natural Resources (e.g., habitats of endangered & threatened species)		
Cultural Resources (other than historic buildings)		
Cultural Resources (historic buildings only)	NHPA § 111 encourages the lease or exchange of historic buildings provided the Advisory Council on Historic Preservation is consulted. The terms and conditions for all historic building transfers should stipulate that the lessee or new owner (1) prevents deterioration and (2) abides by <i>Secretary's Standards and Guidelines for Historic Preservation Projects</i> .	
Socioeconomics (Native American traditional subsistence use areas)	Exclude parcels with Native American traditional subsistence use areas from all real property transfers except to tribes. If there is compelling reason for such real property transfers, consult with potentially affected Native Americans.	

¹ Does not apply to the return of withdrawn land to the public domain.

Exhibit 14-3. Summary of How to Fulfill Environmental Requirements

Environmental Subject Area	Type of Real Property Transfer	
	Leases	Change in Ownership
Floodplain/Wetlands	Conduct a floodplains/wetlands determination and assessment. Include the determination and assessment in an environmental assessment (EA) or environmental impact statement (EIS) if either is required. A real property transfer with an adverse effect on a floodplain or wetland will require an EA as a minimum. If an EIS is not prepared, there must be a public notification and review/comment period. If floodplains are affected, a statement of findings must be published. In the conveyance (lease, deed, etc.), reference those uses that are restricted under identified Federal, state, or local floodplain/wetland regulations and attach other restrictions, as appropriate.	
Natural Resources	Determine if there are any (1) listed or proposed species, (2) listed or proposed critical habitats, or (3) environments of migratory birds. If so, informally consult with U.S. Fish and Wildlife Service (and state counterpart agency). Any adverse effect on an environmentally-sensitive natural resource requires an environmental assessment as the minimum level for a NEPA review. Inform prospective lessee or new owner that a biological assessment may be required for all listed species before any major construction activity may begin.	
Cultural Resources (historic buildings)	Consult with Advisory Council on Historic Preservation.	Apply the Section 106 process. Consult with the State Historic Preservation Officer and, if necessary, Advisory Council on Historic Preservation. A Memorandum of Understanding may be necessary. An adverse effect requires an EA as a minimum.
Cultural Resources (sacred sites)	Consult with potentially affected Native Americans. A real property transfer with an adverse effect requires an EA as a minimum. Evaluate impact on environmental justice.	
Socioeconomics (Native traditional subsistence use areas)		
Socioeconomics (other than Native Americans)	Evaluate impact on environmental justice. Conduct a cost-benefit analysis (if required by a NEPA review). Prepare a Human Resource Plan (see § 5.4.2).	

**Exhibit 14-3. Summary of How to Fulfill Environmental Requirements
(Continued)**

Environmental Subject Area	Type of Real Property Transfer	
	Leases	Change in Ownership
Hazardous Substances, Hazardous Waste, and Petroleum Products	Notify the appropriate State official(s) of any lease of DOE real property on which hazardous substances have been stored beyond one year, disposed of, or released if the lease encumbers the property beyond the date of termination of operations on the property. Make the notification before entering into the lease and include information on the length of the lease, name of the lessee(s), and the uses allowed by the lease.	(1) Enter on the sale contract and deed the types and quantities of hazardous substances stored, released, or disposed of on the property in excess of specified thresholds, and (2) add on only the deed the covenant statement.
Underground Storage Tanks	Enter on the lease the types and quantities of hazardous substances stored, released, or disposed of on the property in excess of specified thresholds.	(1) Enter on the sale contract and deed the types and quantities of hazardous substances stored in USTs, released from USTs, or disposed of on the property in excess of specified thresholds, and (2) add on only the deed the covenant statement.
Radioactive Substances and Contamination	Same as above. Furthermore, residual radioactive material must not exceed the generic guidelines in Exhibit 8-1.	Conduct a radiological survey. Residual radioactive material must not exceed generic guidelines in Exhibit 8-1. (1) Enter on the sale contract and deed the types and quantities of radioactive substances stored, released, or disposed of on the property in excess of specified thresholds, and (2) add on only the deed the covenant statement.

Exhibit 14-3. Summary of How to Fulfill Environmental Requirements (Continued)

Environmental Subject Area	Type of Real Property Transfer	
	Leases	Change in Ownership
Polychlorinated Biphenyls	<p>Notify the appropriate State official(s) of any lease of DOE real property on which hazardous substances or petroleum products have been stored beyond one year, disposed of, or released if the lease encumbers the property beyond the date of termination of operations on the property. Make the notification before entering into the lease and include information on the length of the lease, name of the lessee(s), and the uses allowed by the lease.</p> <p>Conduct an inspection to ascertain the status of compliance of PCBs and PCB Articles with 40 CFR Part 761. Bring into compliance any situations found to be out of compliance.</p> <p>Enter on the lease the types and quantities of PCBs stored, released, or disposed of on the real property in excess of specified thresholds.</p> <p>As a best management practice, notify tenants and lessees of locations of PCB Articles (transformers, capacitors, switchgear, etc.)</p>	<p>Conduct an inspection to ascertain the status of compliance of PCBs and PCB Articles with 40 CFR Part 761. Bring into compliance any situations found to be out of compliance.</p> <p>(1) Enter on the sale contract and deed the types and quantities of PCBs stored, released, or disposed of on the real property in excess of specified thresholds, and (2) add on only the deed the covenant statement.</p>
Asbestos	<p>Enter on the lease the types and quantities of friable asbestos stored, released, or disposed of on the property in excess of specified thresholds.</p> <p>As a best management practice, notify tenants and lessees of locations asbestos-containing materials. If available, provide a copy of the asbestos operations and maintenance plan.</p>	<p>Conduct an inspection to ascertain the status of compliance of PCBs and PCB Articles with 40 CFR Part 761. Bring into compliance any situations found to be out of compliance.</p> <p>(1) Enter on the sale contract and deed the types and quantities of PCBs stored, released, or disposed of on the real property in excess of specified thresholds, and (2) add on only the deed the covenant statement.</p>

**Exhibit 14-3. Summary of How to Fulfill Environmental Requirements
(Continued)**

Environmental Subject Area	Type of Real Property Transfer	
	Leases	Change in Ownership
Clean Air Act, Clean Water Act, RCRA, SWDA Permits	Notify the regulatory authority concerning transfer of environmental permits. Generally such permits are not transferrable without modification or revocation and reissuance of the permit. The regulatory authority asks for (1) evidence that the new owner/operator is able to meet certain criteria, such as responsibilities for financial liability, and (2) a written agreement (with specific date of transfer of responsibility, coverage, and liability) between DOE and new owner or operator.	
NEPA Review	Determine if use of the property changes. Real property transfers with use unchanged are generally CXs. Real property transfers with use changed but having similar environmental impacts can qualify for CXs. Real property transfers with use changed to that of habitat preservation and wildlife management also qualify for CXs. Otherwise, conduct an environmental assessment.	

Exhibit 14-4

Final Procedures for DOE Real Property Transfers Without Change in Ownership

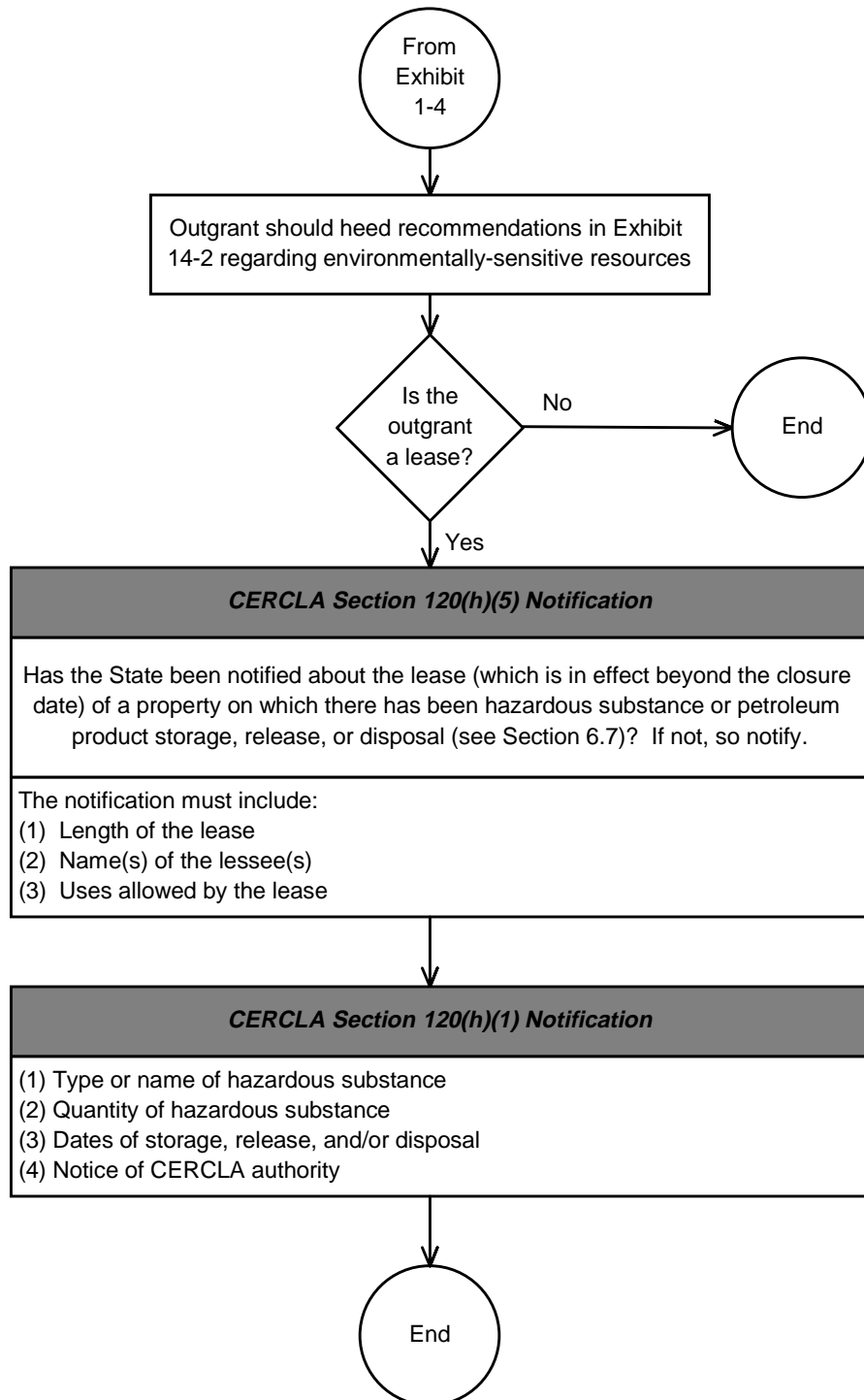


Exhibit 14-5
Final Procedures for DOE Real Property Transfers With
Change in Ownership

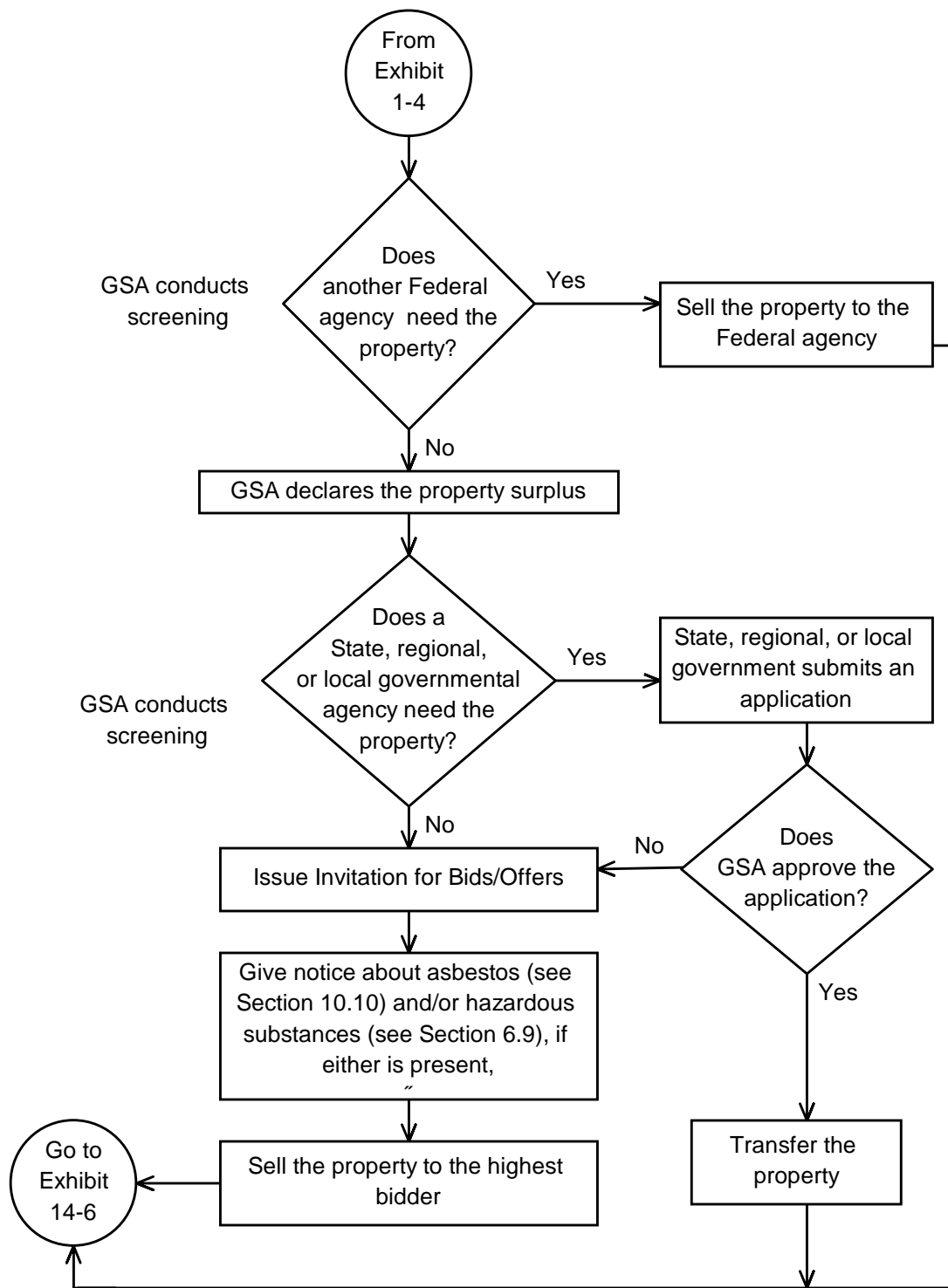
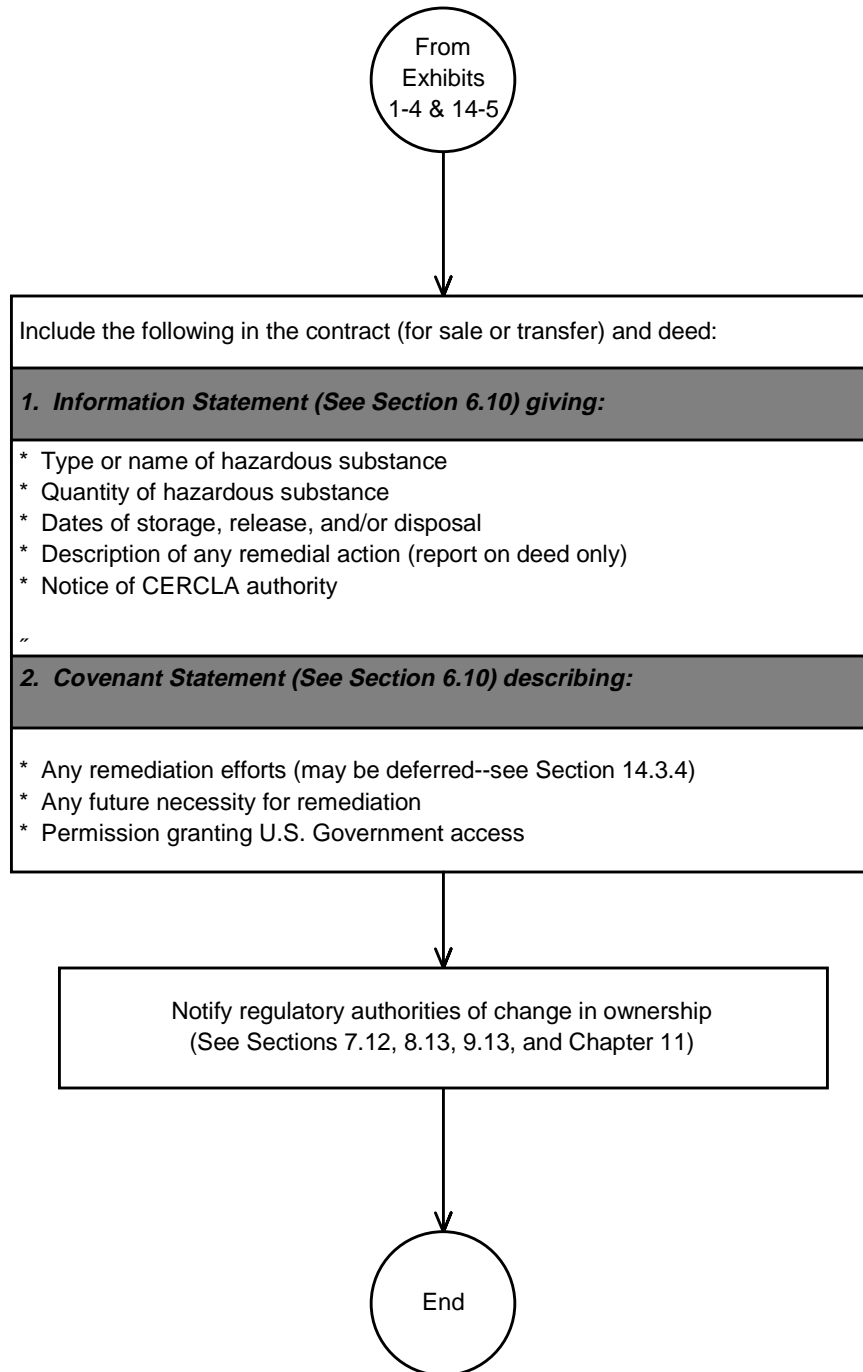


Exhibit 14-6

Final Procedures for DOE Real Property Transfers: Contract and Deed Requirements



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